

73-10c-6. Credit enhancement agreement -- Provisions for use of funds.

(1) (a) A credit enhancement agreement may be made for the purpose of facilitating financing for political subdivisions.

(b) A credit enhancement agreement may provide for the use of funds from the security fund to accomplish the purposes specified in Section 73-10c-4.

(2) (a) The political subdivision, prior to the sale or issuance of a drinking water or a wastewater project obligation, shall:

(i) apply to the Drinking Water Board or Water Quality Board to have its drinking water or wastewater project obligation or both, as desired, designated as covered by a credit enhancement agreement; and

(ii) have entered into a credit enhancement agreement with the Drinking Water Board or Water Quality Board setting forth the terms and conditions of the security or other forms of assistance provided by the agreement.

(b) The Drinking Water Board and Water Quality Board may not designate any drinking water or wastewater project obligation as covered by the credit enhancement agreement:

(i) unless immediately after the designation there is on deposit in the security fund, based on the purchase or then market price of the investments therein, whichever is lower, an amount determined by the Drinking Water Board or Water Quality Board to be sufficient to:

(A) reasonably improve the security for and marketability of the drinking water or wastewater project obligation, or both; and

(B) comply with the terms and provisions of all existing credit enhancement agreements; and

(ii) while held by the state, any agency of the state, the federal government, or any agency of the federal government.

(c) A drinking water project obligation may not be designated as covered by a credit enhancement agreement unless the drinking water project for which it was issued by the political subdivision has been approved by the Department of Environmental Quality, acting through the Drinking Water Board.

(d) A wastewater project obligation may not be designated as secured by a credit enhancement unless the wastewater project for which it was issued by the political subdivision has been approved by the Department of Environmental Quality, acting through the Water Quality Board.

(3) (a) A credit enhancement agreement must provide that the security provided under this chapter and the credit enhancement agreement:

(i) is limited to the money available in the security fund; and

(ii) does not constitute a pledge of or charge against the general revenues, credit, or taxing powers of the state or any political subdivision.

(b) A credit enhancement agreement which obligates the state to pay principal of or interest on any drinking water or wastewater project obligation, including any credit enhancement agreement entered into under Section 73-10c-4, may provide that:

(i) the political subdivision or its agent will notify the council whenever it is not able to pay principal of or interest on the drinking water or wastewater project obligation covered by the credit enhancement agreement and request payment from the security fund; and

(ii) money in the security fund needed to make the payment requested by the political subdivision may be segregated within the security fund and held until the requested payment is made.

(c) A default of the political subdivision under the drinking water or wastewater project obligation may not alter, in any manner, the obligations of the state as provided in the credit enhancement agreement.

(d) Any drinking water or wastewater project obligation covered by the credit enhancement agreement which is represented by a bond, note, or other written instrument shall bear a legend which states these provisions and makes reference to this chapter and the credit enhancement agreement pursuant to which the obligation is secured.

(4) Any credit enhancement agreement for a drinking water or wastewater project obligation may provide that the Drinking Water Board or Water Quality Board:

(a) purchase from the money in the security fund the obligation which the political subdivision is unable to pay, whereupon the Drinking Water Board or Water Quality Board, on behalf of the state, will become the holder of the obligation and entitled to all rights of a holder under the terms of the obligation;

(b) pay, as a loan to the political subdivision from the money in the security fund, to the holder of the obligation the principal or interest, or both, due or to become due on the obligation which the political subdivision is unable to pay;

(c) take both actions referred to in Subsections (4)(a) and (b) relating to any issue of obligations; or

(d) take any other action specified in or contemplated by the credit enhancement agreement.

(5) (a) Any credit enhancement agreement must require that the political subdivision repay to the state any loan of money made from the security fund to make any payments specified in the credit enhancement agreement, which repayment obligation may also be evidenced by bonds or notes of the political subdivision, as the Drinking Water Board or Water Quality Board may determine.

(b) The loan may be for a term, may bear interest at a rate or rates or may bear no interest, as the Drinking Water Board or Water Quality Board may determine, and may be secured by any security the Drinking Water Board or Water Quality Board may determine.

(c) The interest rate for any loan contemplated by, but not made at the time the credit enhancement agreement is executed, may be specified in relationship to a prime rate or other identifiable rate existing at the time the loan is made.

(d) The term of the loan may be specified in the credit enhancement agreement as a maximum term and the actual term stated when the loan is made.

(e) Any security for the loan may include:

(i) a pledge of the revenues from the particular drinking water project or wastewater project;

(ii) an assignment from the holder or holders of the drinking water or wastewater project obligation of the holders' interest in any security for the obligation in the amount needed to service the indebtedness represented by the loan; or

(iii) any other security device.

(f) The Drinking Water Board or Water Quality Board, on behalf of the state, is

subrogated to all rights of the holder of the drinking water or wastewater project obligation against the political subdivision which issued the obligation with respect to the collection of the amount of the loan, but the state is not relieved by this subrogation from its obligation to make payments from the security fund as provided in its credit enhancement agreement with the political subdivision.

(6) Prior to entering into a credit enhancement agreement, the Drinking Water Board or Water Quality Board shall obtain an opinion of counsel experienced in bond matters to the effect that the drinking water or wastewater project obligation to be purchased or with respect to which a loan is to be made, is a valid and binding obligation of the political subdivision which issued it.

(7) Prior to making any payment under the credit enhancement agreement, the Drinking Water Board or Water Quality Board shall:

(a) verify the correctness of the information in any notification referred to in Subsection (3); and

(b) determine that funds in the security fund are adequate to purchase the drinking water or wastewater project obligations or to make any loan of funds provided by the credit enhancement agreement.

Amended by Chapter 175, 2001 General Session